

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of Patrick J. Hornick,  
individually, and d/b/a Hornick  
Construction

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
RECOMMENDATION**

The above-entitled matter came on for prehearing conference before Administrative Law Judge Steve M. Mihalchick on June 22, 2005, at 1:30 p.m. at the Office of Administrative Hearings, 100 Washington Avenue South, in Minneapolis. The prehearing conference was held pursuant to a Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges, dated May 17, 2005.

Christopher M. Kaisershot, Assistant Attorney General, Suite 1200, NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Labor and Industry ("Department"). There was no appearance by or on behalf of Respondent Patrick J. Hornick (Respondent). The last known address of Respondent and Hornick Construction is 41483 – 475<sup>th</sup> Avenue, Sauk Centre, Minnesota 56378. Based upon Respondent's failure to appear, the Department requested a Default Recommendation. The record closed in this matter upon the close of the prehearing conference on June 22, 2005.

**NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of the Department of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the Commissioner of the Department of Labor and Industry, 443 Lafayette Road North, St. Paul, Minnesota 55155, to ascertain the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision in this matter under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

## **STATEMENT OF ISSUES**

The issues in this case are as follows:

1. Whether Respondent failed to respond to the Department's October 27, 2004, request for information in violation of Minn. Stat. §§ 45.027, subds. 1a, 2, 7(a)(2), (4), 326.91, subd. 1(5) (2004).
2. Whether Respondent failed to comply with the Department's January 20, 2005, Order to Appear in violation of §§ 45.027, subds. 1a, 2, 7(a)(2), (4), 326.91, subd. 1(5) (2004).
3. Whether Respondent engaged in unlicensed residential building contractor activities and fraudulent, deceptive, or dishonest practices in violation of Minn. Stat. §§ 45.027, subd. 7(a)(2), 326.84, subds. 1, 1a, 326.91, subds. 1(2), (5), 4 (2004) and Minn. R. 2891.0040, subp. 1F (2003).
4. Whether Respondent obtained a building permit from the City of Sauk Centre by the fraudulent use of an expired and, thus, fictitious building contractor license number in violation of Minn. Stat. §§ 45.027, subd. 7(a)(2), 326.91, subd. 1(13) (2004).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

## **FINDINGS OF FACT**

1. The Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges in this matter were served upon Respondent by U.S. mail on May 17, 2005, at the last known address of Patrick J. Hornick and Hornick Construction.

2. The Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges served on Respondent contained the following additional notice:

Respondent's failure to appear at the prehearing conference may result in a finding that the Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.

3. Respondent failed to file a Notice of Appearance with the Administrative Law Judge or make any request for a continuance or any other relief. Respondent did not appear at the prehearing conference scheduled on June 22, 2005, or have an appearance made on his behalf.

4. Because Respondent failed to appear at the hearing in this matter, Respondent is in default. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing and Statement of Charges are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Minnesota Department of Labor and Industry and the Administrative Law Judge have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 45.027, and 326.91 (2004).

2. The Department has given proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law and rule.

3. Respondent, having made no appearance at the hearing and not requesting any continuance or relief, is in default.

4. Pursuant to Minn. R. 1400.6000, a contested case hearing may be decided adversely to a party who defaults. On default, the allegations contained in the Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. By failing to respond to the Department's October 27, 2004, request for information, Respondent violated Minn. Stat. §§45.027, subds. 1a, 2, 7(a)(2), (4), and 326.91, subd. 1(5) (2004).

6. By failing to appear before the Department as ordered on January 20, 2005, Respondent violated Minn. Stat. §§45.027, subds. 1a, 2, 7(a)(2), (4), and 326.91, subd. 1(5) (2004).

7. By entering into residential building and/or remodeling contracts with two Sauk Centre homeowners while his license was inactive, Respondent engaged in unlicensed residential building contractor activities and fraudulent, deceptive, or dishonest practices in violation of Minn. Stat. § 45.027, subd. 7(a)(2), 326.84, subds. 1, 1a, 326.91, subds. 1(2), (5), 4 (2004), and Minn. R. 2891.0040, subp. 1F (2003).

8. By obtaining a building permit from the City of Sauk Centre by the fraudulent use of an expired residential building contractor license number, Respondent violated Minn. Stat. §§ 45.027, subd. 7(a)(2) and 326.91, subd. 1(13) (2005).

9. Respondent is subject to discipline and civil penalties pursuant to Minn. Stat. §§ 45.027, subds. 6 and 7, and 326.91, subd. 1 (2004), and the imposition of sanctions is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED that the Commissioner of the Department of Labor and Industry take disciplinary action against Respondent and impose appropriate civil penalties.

Dated this 20th day of July 2005.

Reported: Default.

S/ Steve M. Mihalchick

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STEVE M. MIHALCHICK

Administrative Law Judge

### **NOTICE OF AGENCY DECISION**

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.